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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ENVER KARAFILI,

Plaintiff,

v.

RON DAVIS, Warden,

Defendant.

Case No. 15cv2817 BEN (MDD)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, along a request to proceed *in forma pauperis*. The Court does not rule on Petitioner's request to proceed *in forma pauperis* because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his March 1, 2000 conviction in San Diego County Superior Court case number SCD147665. On July 26, 2007, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in Case No. 07cv1372. In that petition, Petitioner challenged his March 1, 2000 conviction in San Diego Superior Court case

1 number SCD147665 as well. *See Karafili v. Tilton*, No. 07cv1372 (S.D. Cal. filed July
2 26, 2007) (ECF No. 1 at 1-2). On February 4, 2009, this Court dismissed the petition
3 because it had been filed after the expiration of the one-year statute of limitations. *See id.*
4 (ECF No. 20, Order Dismissing Petition). Petitioner appealed that determination. On
5 September 7, 2011, the Ninth Circuit Court of Appeals affirmed this Court's decision.
6 *Karafili v. Tilton*, No. 09-55388 (9th Cir. Sept. 7, 2011).

7 Petitioner is now seeking to challenge the sentence imposed as a result the
8 conviction he challenged in his prior federal habeas petition. Unless a petitioner shows
9 he or she has obtained an Order from the appropriate court of appeals authorizing the
10 district court to consider a successive petition, the petition may not be filed in the district
11 court. *See* 28 U.S.C. § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 153
12 (2007) (a petition is successive where it challenges "the same custody imposed by the
13 same judgment of a state court" as a prior petition). A successive application is
14 permissible "only if it rests on a new rule of constitutional law, facts that were previously
15 unavailable, or facts that would be sufficient to show constitutional error in the
16 petitioner's conviction." 28 U.S.C. § 2244(b)(2). "Even if a petitioner can demonstrate
17 that he qualifies for one of these exceptions, he must seek authorization from the court of
18 appeals before filing his new petition with the district court." *Woods v. Carey*, 525 F.3d
19 886, 888 (9th Cir.2008). Here, there is no indication the Ninth Circuit Court of Appeals
20 has granted Petitioner leave to file a successive petition.

21 CONCLUSION

22 Because there is no indication Petitioner has obtained permission from the Ninth
23 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
24 Petition. Accordingly, the Court **DISMISSES** this action without prejudice. Petitioner
25 may file a petition in this court only if he obtains the necessary order from the Ninth
26 Circuit Court of Appeals. For Petitioner's convenience, the Clerk of Court shall attach a

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1 blank Ninth Circuit Application for Leave to File Second or Successive Petition.

2 **IT IS SO ORDERED.**

3
4 DATED: *Dec* *30*, 201*5*
~~January 30~~, 201*6*


HON. ROGER T. BENITEZ
United States District Judge